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TOM LYTHGOE, CHAIR

KEN WEBER

DAVE KIRSCH

**PROCEEDING OF THE BOARD OF COMMISSIONERS  
COUNTY OF JEFFERSON, STATE OF MONTANA  
December 29, 2009**

**Present:** Commissioners Lythgoe, Weber and Kirsch; Joe Carter, Road Supervisor; Bonnie Ramey, Clerk and Recorder; Matt Johnson, County Attorney; Jan Anderson, *Boulder Monitor/ Jefferson County Courier*

**MINUTES**

Commissioner Lythgoe moved to adopt the minutes of December 8. Commissioner Weber seconded. The motion carried.

**CORRESPONDENCE**

Commissioner Lythgoe read a statement from Nita McCauley that was sent as a letter to the editor of the *Boulder Monitor* and *Jefferson County Courier* regarding the request from Bob Ohnstad for repayment of taxes paid in excess. The letter stated that the Tax Appeal Board did not recommend denying the request for a refund of taxes, but that the Board made a judgment for an adjustment of the 2009 market value. The letter further stated that the Tax Appeal Board deals with market values and does not advise the Commission regarding refunding taxes paid in prior years. Commissioner Weber said that it was probably something that he said in trying to deal with Mr. Ohnstad. He knows that it was in the paper that the Tax Appeal Board said that, and he apologizes if something he said gave that impression.

Commissioner Lythgoe read a written letter of resignation from Commissioner Weber, effective January 1, 2010. Commissioner Lythgoe stated that there probably won't be another opportunity to comment on Commissioner Weber's tenure; he stated that it has been a pleasure to work with Commissioner Weber and he has been a significant asset as a Commissioner. Commissioner Lythgoe stated that he has been impressed with Commissioner Weber's intelligence and ability to grasp issues and also his desire to become informed with issues and doing the homework.

## **CALENDAR REVIEW**

12/30 Meeting with Tom Harrington & Tara Mastel – 2:30  
Meeting with E. Helena City Council – East Helena - 4:00

## **COMMISSION REPORTS**

### **RSID LAWSUIT**

Commissioner Lythgoe reported that on Wednesday he went on a field trip with Judge Tucker, Joe Carter, Matt Johnson and Joe Schmaus to look at Holmes Gulch as it access his property. This relates to Mr. Schmaus' lawsuit seeking relief from RSID fees assessed to him.

## **ITEMS FOR COMMISSIONERS ACTION OR REVIEW**

### **DISCUSS CELL PHONE POLICY**

Commissioner Lythgoe stated that the County Attorney's office, with the help of the Sheriff, developed a draft policy prior to a meeting with Department Heads and Elected Officials. In discussing the draft policy, it was felt that it was probably not the route we want to take. Carl also drew up a draft policy that was somewhat inclusive of what Matt had presented. Since then he has had a couple conversations with Matt and the sheriff and the sheriff met with Carl. Since that conversation, Carl has made further revisions of his draft policy, which he has asked Matt to review. This gives a couple options for employees of the county which we think will keep us out of trouble with the IRS.

Matt stated that he only had about a half hour to review this, as he was also discussing the policy with the sheriff, who is amenable to the changes. However, there are still some issues regarding pricing.

The biggest concern he has is that, diplomatically, he likes his plan better, but he's not going to win on that. He thought that he would keep it more simple for not having to do the paperwork or the tracking or have someone review and audit bills, be it each month or once or twice a year. He understands what Carl put together and it does allow that option for those that can justify the use of the phone with permission of the department head. What Carl put together is pretty basic. On personal use he discusses that the county would provide phone or data service to employees on a limited basis. The IRS says that having a cell phone available is a personal benefit and they say that the percentage of the benefit cannot be the same percentage of personal use. Carl also provides for employees to sign a form to declare their personal phone use, based on one month's phone bill. It appears that this will be done either once or twice a year. The IRS does allow that.

The biggest issue he has, as well as Craig, is who is going to take charge to make sure that the reporting is done. Carl says that the forms should be in the personnel file, but does that mean that it will be the responsibility of the personnel officer or would it be up to the department head.

Matt stated that he thinks that Carl has a good start, but it still needs some tweaking.

Commissioner Lythgoe said that his question is, he and Matt spoke last week when Matt indicated that he had decided a couple months ago what he personally is going to do. He asked Matt if he is paying for his own phone and the county will reimburse him. Matt stated that he is seeking reimbursement below what the county would be paying for the phone. Reimbursement on a monthly basis will be made through payroll and will be taxed. Matt stated that he will be saving the county money because any overage in use will his responsibility.

Commissioner Lythgoe stated that they need to decide if they are going to give employees options or pick a plan. He asked Matt if he has an opinion on if it would be better to pick a plan or to give employees options. Matt stated that if the IRS comes in and doesn't like whatever plan we are doing, they will do what they will do. His thought about it is if anyone is to use their phone for any personal benefit whatsoever, it might be better for the county to say that this is the amount of reimbursement they are going to get. If someone swears on a form that they don't use the phone for personal use that will maintain the county plan, but he asked how you can swear to a percentage and be accurate unless the bills are audited on a monthly basis.

Commissioner Lythgoe stated that the Elected Officials can do whatever they choose, the Sheriff is correct in that. However, it nice to have a policy and to have a policy in place that the whole county can be unified around. This makes more sense to him, rather than each Elected Official having their own personal plan. Matt stated that he agrees – it is better to have a policy that the entire county can work with, and Craig was fine with that too. The only problem he has is percentages of personal use and how to enforce that. Commissioner Lythgoe stated that the way to enforce this is to do the audit, but the question is how often to do the audit so that it is correct. Matt stated that twice a year would be better than once. The issue is if Department Heads will be in compliance with that. He knows that Bonnie's concern is how much more work it will be for her office. Commissioner Lythgoe stated that it shouldn't be up to Bonnie's office to do anything other than printing out the bills and getting them to the departments. He believes that they are already doing this. Bonnie stated that Leslie hasn't been printing out the entire bill, but she has started since this discussion began. Bonnie further stated that her office doesn't have the time to go through each phone bill, and they have no way of knowing what is personal and business.

Commissioner Weber stated that this still leaves open to arbitrary decisions by Department Heads and Elected Officials. He isn't pointing a finger at anyone, but what constitutes "allowable use" could vary greatly from department head to department head. Many of the employees are union members also, and this could create a benefit for one employee that another employee doesn't get. He thinks that it would be better, if going to have policy, that we outline exactly what supervisors need to be looking at and how that is established. He doesn't think that we can leave it up to each department to come up with that, because then we open ourselves up for that tit-for-tat. Also, there is a discrepancy between plans/costs that needs to be addressed. Commissioner Lythgoe agreed that this needs to be verified, but he thinks that the numbers Carl put into the document are actual plan numbers.

Commissioner Lythgoe stated that there needs to be a range, a bottom and a top, rather than specific numbers. His biggest question is: do we want to even give them the first option, to specify a percentage or do we just want to provide them with one option where they get reimbursed for the phone and an amount monthly.

Commissioner Weber stated that this question is best answered by the State of Montana's policy which says that employees don't have to come up with a percentage. It is their policy that the phone be used for a list of personal reasons, and it is within the policy and not a personal benefit. This makes more sense to him than to try to come up with a percentage each month; that would be a nightmare.

Commissioner Kirsch stated that he doesn't think that anyone needs to buy a phone; that traditionally comes with the plan. Secondly, there are people that use a cell phone rarely, and there are those that have wives that call them every 15 minutes. He doesn't think that this can be fair and he doesn't think that someone should have to try to audit all these phones. He thinks that everyone should own their phone and get reimbursed. He thinks that this is a real headache.

Bonnie stated that there are some departments that have a lot of text messaging, and some departments that have a lot of phone calls that way exceed the monthly limit. These are generally turned over to the department head to let them know that they have an employee that is exceeding plan limits. Commissioner Kirsch stated that if we went with the percentage plan and an employee had a month where they were over and we were audited, we would be in trouble. Bonnie stated that this is what happened to Cascade County. Commissioner Lythgoe asked if Cascade County had a policy at the time. Bonnie stated that they didn't; they had basically what Jefferson County has now.

Commissioner Lythgoe stated that the reason he likes to give employees an option, is if we just go with owning your own phone, based on the meeting they had the other day, there are certain people that said that they wouldn't carry a cell phone. In the personnel policy, there are people that we require to have a cell phone and he doesn't know if the personnel policy deals with that. If it doesn't, it needs to. There are certain employees that need to have a cell phone.

Matt stated that he and Kellie have spoken to a lot of employees that said that they just wouldn't have a cell phone. There were questions about in-coming calls, and he answered that they would have to politely let people know not to use that number. There would be two choices available, to get their own phone line and be reimbursed or to sign the form and agree to comply.

Commissioner Weber noted that the draft policy stated that the Department Head will make the decision, rather than the employee. He has a bit of a problem with that; he thinks that the employee should be allowed to make that decision. Bonnie stated that she totally disagrees with that. None of her employees have them, but she doesn't want to have to monitor cell phones. She feels that the Elected Official needs to have some say over that. She has 8 election phones that are used for one entire week but they are for election business only and she does not allow any personal calls.

Commissioner Lythgoe stated that the advantage of having a personal phone is that there is no auditing required. Matt said that there are some people that don't want to have to go get their own phone because it would require a credit check. Based on the credit check, it could change the payments. Commissioner Lythgoe stated that he thinks that this is an important issue. This is probably a reason why they have to have both options. Commissioner Kirsch said that he has thought about this. He asked if a person has such bad credit that they can't get a cell phone, if there is the possibility that something could be worked out with the Clerk and Recorder's office where the fees are taken out of their paycheck. Commissioner Lythgoe stated that he isn't sure that people would want others to know of their credit problems.

Joe noted that when you sign up for a cell phone, you are obligated to have a one or two year contract. Commissioner Lythgoe noted that the county would be paying for the contract. Matt stated that there is the possibility that an employee might not stay with the county for the life of the contract. Commissioner Weber stated that this is an issue that Carl had. Commissioner Lythgoe said that if this happens, the county would probably have to take care of the rest of the contract. Commissioner Kirsch asked about the phone being transferred to the replacement. It was noted that the contracts are non-transferable.

Commissioner Weber stated that it says somewhere that the financial department would be in charge of something and somewhere else the payroll department; he feels that there needs to be some continuity.

Bonnie asked if the Department Heads and Elected Officials will have an opportunity to review the policy. Commissioner Lythgoe stated that Carl wasn't able to be at the meeting today, but changes could be made and then sent to the Elected Officials and Department Heads.

Joe stated that since he started working here, he has always carried both his personal cell phone as well as a county phone. He decided to get a phone for each district so that the on-call employee for the weekend doesn't have to sit at home by the phone. He made it clear that the phone is for county business only. If he has to audit each of these phones, he won't have any idea of what calls could be personal.

Matt stated that he can see where the county should maintain certain phones, but someone is still going to have to review it; he feels that it would be simplest to get reimbursed and get your own phone. With that, the county might come out ahead if people go over their limits. Commissioner Weber stated that there is a danger in what Matt is talking about. If we currently have 48 phones with 200 minutes per month, currently pooled, we're betting that some of the phones will be under and some will be over and hoping that it will come out fairly even. If we allow 24 phones to come out of the pool and they are all the light users and the heavy users are left in the pool, we potentially go way over our minutes and ruin the good deal that we have going with the pool. Carl has a legitimate fear in that.

Matt stated that the other option that Carl was worried about too, if you pick a percentage of personal usage, employees more apt to feel justified using the phone for personal use, as they are being taxed on it.

Commissioner Lythgoe asked if the other Commissioners feels that employees should be given an option or are if we are better off to get rid of the percentage option and just reimburse for personal phones. Commissioner Kirsch stated that feels that there should be an option. Commissioner Lythgoe stated “for county use only” just isn’t going to work. He can’t imagine people objecting to getting a phone paid for by Jefferson County and getting reimbursed for the phone bill. Commissioner Kirsch asked what happens if they quit. Commissioner Lythgoe stated that this will have to be addressed. Commissioner Weber said that the best option is to get this out to the Department Heads and Elected Officials and get an opinion from them. Commissioner Lythgoe agreed that they need to get some feedback. Bonnie asked to see the draft before it is sent out.

**RESOLUTION 50-2009 SETTING HOLIDAYS FOR 2010**

Commissioner Weber read the resolution as follows:

**RESOLUTION 50-2009**

**RESOLUTION TO SET OFFICIAL HOLIDAYS FOR THE YEAR 2010**

**WHEREAS**, Montana State Statue 1-1-216 identifies legal holidays for state and local holidays,

**NOW, THEREFORE, BE IT RESOLVED** that Jefferson County Board of County Commissioners designates the following dates as holidays in Jefferson County for the year 2010.

<b><u>Holidays</u></b>	<b><u>Observed</u></b>
New Year’s Day	Friday, January 1, 2010
Martin Luther King Day	Monday, January 18, 2010
President’s Day	Monday, February 15, 2010
Memorial Day	Monday, May 31, 2010
Independence Day	Monday, July 5, 2010
Labor Day	Monday, September 6, 2010
Columbus Day	Monday, October 11, 2010
General Election Day	Tuesday, November 2, 2010
Veteran’s Day	Thursday, November 11, 2010
Thanksgiving Day	Thursday, November 25, 2010
Christmas Day	Friday , December 24, 2010

**BE IT FURTHER RESOLVED** that Friday, November 26<sup>th</sup> will be given as a day off with pay.

**BE IT FURTHER RESOLVED** that County offices and facilities will be closed on these days with the exception of essential services.

**DATED** this 29<sup>th</sup> day of December, 2009.

**ATTEST:**

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**BONNIE RAMEY**  
**CLERK AND RECORDER**

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**TOMAS E. LYTHGOE, CHAIR**

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**KEN WEBER, COMMISSIONER**

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**DAVE KIRSCH, COMMISSIONER**

Commissioner Kirsch moved to adopt the resolution. Commissioner Weber noted for clarification, this keeps happening but it has never has been said in meeting/minutes, the observed days are the holiday, not the official date. For instance, Independence Day falls on a Sunday but will be observed on Monday. There are some that work on weekends and keep noting that the actual holiday is "x". While this is correct, the observed days count as the holiday in these instances. Commissioner Weber seconded. The motion carried.

**AWARD BID FOR QUAINANCE LANE BRIDGE REPLACEMENT**

Commissioner Lythgoe read a letter from Jeremiah Theys of Great West Engineering recommending that the bid be awarded to Mark Buck Construction. Commissioner Weber noted that after last week's meeting a bid was delivered to the Commission by FedEx. As it came in after the deadline, the bid was not opened and has been sent back.

Commissioner Weber moved to grant the Quaintance Lane bridge replacement bid to Mark Buck Construction. Commissioner Kirsch seconded. The motion carried.

**CANCEL MEETING OF JANUARY 5**

Commissioner Lythgoe stated that this needs to be done as there won't be a quorum available for the meeting. Commissioner Weber moved to cancel the meeting of January 5, 2010 due to a lack of quorum. Commissioner Kirsch seconded. The motion carried.

Commissioner Weber moved to adjourn. Commissioner Kirsch seconded. The motion carried.

**MEETING ADJOURNED**

**ATTEST:**

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**BONNIE RAMEY  
CLERK AND RECORDER**

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**TOMAS E. LYTHGOE, CHAIR**

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**KEN WEBER, COMMISSIONER**

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**DAVE KIRSCH, COMMISSIONER**